B.C.D. 01-80 OCT 1 0 2001

EMPLOYER STATUS DETERMINATION
InterSys Technology, Inc.

This is the determination of the Railroad Retirement Board concerning the status of InterSys Technology, Inc., as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding InterSys was provided by Donald R. Mader, President of InterSys, and also from the InterSys website. According to Mr. Mader, InterSys was incorporated August 30, 1995, and began doing business the following month. InterSys is a privately held company owned by Donald R. Mader, Tracey Mader, and Fletcher Bornschlegl. None of these individuals is an officer or director of, or has a controlling interest in, a rail carrier. No railroad has a financial interest in InterSys. InterSys reports that it currently has three employees, although it hires other individuals to staff its projects on a per contract basis.

InterSys does consulting work regarding information technology. It consults on testing methodology and processes, system and process training, implementation strategies, and mainframe programming. A recently obtained contract with the Metropolitan Transportation Authority in New York involves the provision of permanent personnel to that company.[1] About 98 percent of InterSys' business has been with the rail industry, including Burlington Northern and Santa Fe, the Canadian National Railroad, etc. and others.

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[1] Although it is not a covered employer under the RRA and the RUIA, the Metropolitan Transportation Authority (MTA) has a BA number for accounting and payroll purposes for reporting its employees who work at Metro-North Railroad, which is a covered employer under the Acts. The Board's office of Audit and Compliance is reviewing whether individuals working under the InterSys contract with MTA are working for Metro-North Railroad.

InterSys Technology, Inc.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

InterSys clearly is not a carrier by rail. Further, the evidence establishes that it is not under common ownership with any rail carrier nor is it controlled by officers or directors who control a railroad. Therefore, InterSys is not a covered employer under the Acts.

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